

**REMARKS**

Claims 1-12 are in the application.

As a result of the foregoing amendment, claim 8 has been amended to place it in independent form.

Accordingly, since the Examiner has indicated that claims 8 and 9 would be allowable if rewritten in independent form, it is submitted that claims 8 and 9 are now in condition for allowance.

However, applicants respectfully submit that the remaining claims in the application are also allowable over the art of record.

Accordingly, applicants respectfully request the Examiner to reconsider and withdraw the rejections of the claims under 35 U.S.C. 102(b) and 35 U.S.C. 103(a).

Applicants respectfully submit that the reference to Fischer, which has been newly relied on by the Examiner in rejecting the claims, is directed to subject matter which is totally foreign to an implant for the human body. Thus, the reference is directed to an anchor which is used in building construction, for example, an anchor which is to be embedded in concrete.

Accordingly, it is submitted that it is clear that the implants according to the present invention and the anchor according to the reference are from non-compatible fields.

By simply taking into consideration the material of the anchor of the reference, it is submitted that it is apparent that this anchor would not be capable of supporting surfaces of vertebrae of the vertebral column which extend at an angle relative to each other. However, aside from the fact that the present application and the cited patent are directed to different fields, applicants submit that the anchor of the reference cannot anticipate the implant according to the present invention as claimed in claim 1 because the reference does not even show all of the features of the implant according to the present invention. The reference clearly does not show sidepieces which are configured to converge towards the free ends of the sidepieces in an initial position for the distraction. In anchor of the reference, the outer sides of the legs of the anchor extend parallel to each other. The reference merely shows short angled ends 16 whose length is so small as compared to the length of the sides that the anchor could be easily inserted between two oppositely located surfaces which are inclined relative to each other, as is the case in accordance with the present invention as claimed.

Also, the reference to Fischer does not render obvious the

present invention as claimed.

Those skilled in the art who take into consideration the reference to Fischer, even though it is from a technically remote field, will not be motivated by the reference to move the bolt 5 for spreading apart the sides in a direction which is opposite the intended direction. This is especially not possible because of the concept that the angle ends 16 are merely bent outwardly during this movement, while this movement does not result in a spreading apart of the sides, as this is the case when the element 7 presses in the intended direction against the oblique edges of the bent U-webs of the two sides 4a' and 4b' which engage in each other. Accordingly, especially because the cited patent and the present application are directed to subject matter which is completely different, it is submitted that the claims of the present application are allowable over the art of record.

Therefore, in view of the foregoing, it is submitted that this application is now in condition for allowance and such allowance is respectfully solicited.

Any additional fees or charges required at this time in connection with the application may be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

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Dated: January 18, 2006

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 18, 2006.

By:

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Date: January 18, 2006